

AN ACT

relating to operating a motor vehicle or a watercraft while intoxicated or under the influence of alcohol.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Nicole "Lilly" Lalime Act.

SECTION 2. The heading to Section 106.041, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.041. DRIVING OR OPERATING WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

SECTION 3. Subsections (a) and (g), Section 106.041, Alcoholic Beverage Code, are amended to read as follows:

(a) A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.

(g) An offense under this section is not a lesser included offense under Section 49.04, 49.045, or 49.06, Penal Code.

SECTION 4. Subsection (j), Section 106.041, Alcoholic Beverage Code, is amended by adding Subdivision (4) to read as follows:

(4) "Watercraft" has the meaning assigned by Section 49.01, Penal Code.

SECTION 5. Article 18.01, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (j) to

1 read as follows:

2 (c) A search warrant may not be issued under Article
3 18.02(10) [~~pursuant to Subdivision (10) of Article 18.02 of this~~
4 ~~code~~] unless the sworn affidavit required by Subsection (b) [~~of~~
5 ~~this article~~] sets forth sufficient facts to establish probable
6 cause: (1) that a specific offense has been committed, (2) that the
7 specifically described property or items that are to be searched
8 for or seized constitute evidence of that offense or evidence that a
9 particular person committed that offense, and (3) that the property
10 or items constituting evidence to be searched for or seized are
11 located at or on the particular person, place, or thing to be
12 searched. Except as provided by Subsections (d), ~~[and]~~ (i), and (j)
13 [~~of this article~~], only a judge of a municipal court of record or a
14 county court who is an attorney licensed by the State of Texas, a
15 statutory county court judge, a district court judge, a judge of the
16 Court of Criminal Appeals, including the presiding judge, or a
17 justice of the Supreme Court of Texas, including the chief justice,
18 may issue warrants under Article 18.02(10) [~~pursuant to Subdivision~~
19 ~~(10), Article 18.02 of this code~~].

20 (j) Any magistrate who is an attorney licensed by this state
21 may issue a search warrant under Article 18.02(10) to collect a
22 blood specimen from a person who:

23 (1) is arrested for an offense under Section 49.04,
24 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and

25 (2) refuses to submit to a breath or blood alcohol
26 test.

27 SECTION 6. Subsections (h) and (n), Section 13, Article

1 42.12, Code of Criminal Procedure, are amended to read as follows:

2 (h) If a person convicted of an offense under Sections
3 49.04-49.08, Penal Code, is placed on community supervision, the
4 judge shall require, as a condition of the community supervision,
5 that the defendant attend and successfully complete before the
6 181st day after the day community supervision is granted an
7 educational program jointly approved by the Texas Commission on
8 Alcohol and Drug Abuse, the Department of Public Safety, the
9 Traffic Safety Section of the Texas Department of Transportation,
10 and the community justice assistance division of the Texas
11 Department of Criminal Justice designed to rehabilitate persons who
12 have driven while intoxicated. The Texas Commission on Alcohol and
13 Drug Abuse shall publish the jointly approved rules and shall
14 monitor, coordinate, and provide training to persons providing the
15 educational programs. The Texas Commission on Alcohol and Drug
16 Abuse is responsible for the administration of the certification of
17 approved educational programs and may charge a nonrefundable
18 application fee for the initial certification of approval and for
19 renewal of a certificate. The judge may waive the educational
20 program requirement or may grant an extension of time to
21 successfully complete the program that expires not later than one
22 year after the beginning date of the person's community
23 supervision, however, if the defendant by a motion in writing shows
24 good cause. In determining good cause, the judge may consider but
25 is not limited to: the defendant's school and work schedule, the
26 defendant's health, the distance that the defendant must travel to
27 attend an educational program, and the fact that the defendant

1 resides out of state, has no valid driver's license, or does not
2 have access to transportation. The judge shall set out the finding
3 of good cause for waiver in the judgment. If a defendant is
4 required, as a condition of community supervision, to attend an
5 educational program or if the court waives the educational program
6 requirement, the court clerk shall immediately report that fact to
7 the Department of Public Safety, on a form prescribed by the
8 department, for inclusion in the person's driving record. If the
9 court grants an extension of time in which the person may complete
10 the program, the court clerk shall immediately report that fact to
11 the Department of Public Safety on a form prescribed by the
12 department. The report must include the beginning date of the
13 person's community supervision. Upon the person's successful
14 completion of the educational program, the person's instructor
15 shall give notice to the Department of Public Safety for inclusion
16 in the person's driving record and to the community supervision and
17 corrections department. The community supervision and corrections
18 department shall then forward the notice to the court clerk for
19 filing. If the Department of Public Safety does not receive notice
20 that a defendant required to complete an educational program has
21 successfully completed the program within the period required by
22 this section, as shown on department records, the department shall
23 revoke the defendant's driver's license, permit, or privilege or
24 prohibit the person from obtaining a license or permit, as provided
25 by Sections 521.344(e) and (f), Transportation Code. The
26 Department of Public Safety may not reinstate a license suspended
27 under this subsection unless the person whose license was suspended

1 makes application to the department for reinstatement of the
2 person's license and pays to the department a reinstatement fee of
3 \$100 [~~\$50~~]. The Department of Public Safety shall remit all fees
4 collected under this subsection to the comptroller for deposit in
5 the general revenue fund. This subsection does not apply to a
6 defendant if a jury recommends community supervision for the
7 defendant and also recommends that the defendant's driver's license
8 not be suspended.

9 (n) Notwithstanding any other provision of this section or
10 other law, the judge who places on community supervision a
11 defendant who was [~~is~~] younger than 21 years of age at the time of
12 the offense and was convicted for an offense under Sections
13 49.04-49.08, Penal Code, shall:

14 (1) order that the defendant's driver's license be
15 suspended for 90 days beginning on the date that the person is
16 placed on community supervision; and

17 (2) require as a condition of community supervision
18 that the defendant not operate a motor vehicle unless the vehicle is
19 equipped with the device described by Subsection (i) of this
20 section.

21 SECTION 7. Section 521.341, Transportation Code, is amended
22 to read as follows:

23 Sec. 521.341. REQUIREMENTS FOR AUTOMATIC LICENSE
24 SUSPENSION. Except as provided by Sections 521.344(d)-(i), a
25 license is automatically suspended on final conviction of the
26 license holder of:

27 (1) an offense under Section 19.05, Penal Code,

1 committed as a result of the holder's criminally negligent
2 operation of a motor vehicle;

3 (2) an offense under Section 38.04, Penal Code, if the
4 holder used a motor vehicle in the commission of the offense;

5 (3) an offense under Section 49.04, 49.045, or 49.08,
6 Penal Code;

7 (4) an offense under Section 49.07, Penal Code, if the
8 holder used a motor vehicle in the commission of the offense;

9 (5) an offense punishable as a felony under the motor
10 vehicle laws of this state;

11 (6) an offense under Section 550.021;

12 (7) an offense under Section 521.451 or 521.453; or

13 (8) an offense under Section 19.04, Penal Code, if the
14 holder used a motor vehicle in the commission of the offense.

15 SECTION 8. Subsections (a) and (b), Section 521.342,
16 Transportation Code, are amended to read as follows:

17 (a) Except as provided by Section 521.344, the license of a
18 person who was under 21 years of age at the time of the offense,
19 other than an offense classified as a misdemeanor punishable by
20 fine only, is automatically suspended on conviction of:

21 (1) an offense under Section 49.04, 49.045, or 49.07,
22 Penal Code, committed as a result of the introduction of alcohol
23 into the body;

24 (2) an offense under the Alcoholic Beverage Code,
25 other than an offense to which Section 106.071 of that code applies,
26 involving the manufacture, delivery, possession, transportation,
27 or use of an alcoholic beverage;

1 (3) a misdemeanor offense under Chapter 481, Health
2 and Safety Code, for which Subchapter P does not require the
3 automatic suspension of the license;

4 (4) an offense under Chapter 483, Health and Safety
5 Code, involving the manufacture, delivery, possession,
6 transportation, or use of a dangerous drug; or

7 (5) an offense under Chapter 485, Health and Safety
8 Code, involving the manufacture, delivery, possession,
9 transportation, or use of an abusable volatile chemical.

10 (b) The department shall suspend for one year the license of
11 a person who is under 21 years of age and is convicted of an offense
12 under Section 49.04, 49.045, 49.07, or 49.08, Penal Code,
13 regardless of whether the person is required to attend an
14 educational program under Section 13(h), Article 42.12, Code of
15 Criminal Procedure, that is designed to rehabilitate persons who
16 have operated motor vehicles while intoxicated, unless the person
17 is placed under community supervision under that article and is
18 required as a condition of the community supervision to not operate
19 a motor vehicle unless the vehicle is equipped with the device
20 described by Section 13(i) of that article. If the person is
21 required to attend such a program and does not complete the program
22 before the end of the person's suspension, the department shall
23 suspend the person's license or continue the suspension, as
24 appropriate, until the department receives proof that the person
25 has successfully completed the program. On the person's successful
26 completion of the program, the person's instructor shall give
27 notice to the department and to the community supervision and

1 corrections department in the manner provided by Section 13(h),
2 Article 42.12, Code of Criminal Procedure.

3 SECTION 9. Subsections (a), (c), and (i), Section 521.344,
4 Transportation Code, are amended to read as follows:

5 (a) Except as provided by Sections 521.342(b) and 521.345,
6 and by Subsections (d)-(i), if a person is convicted of an offense
7 under Section 49.04, 49.045, or 49.07, Penal Code, the license
8 suspension:

9 (1) begins on a date set by the court that is not
10 earlier than the date of the conviction or later than the 30th day
11 after the date of the conviction, as determined by the court; and

12 (2) continues for a period set by the court according
13 to the following schedule:

14 (A) not less than 90 days or more than one year,
15 if the person is punished under Section 49.04, 49.045, or 49.07,
16 Penal Code, except that if the person's license is suspended for a
17 second or subsequent offense under Section 49.07 committed within
18 five years of the date on which the most recent preceding offense
19 was committed, the suspension continues for a period of one year;

20 (B) not less than 180 days or more than two years,
21 if the person is punished under Section 49.09(a) or (b), Penal Code;
22 or

23 (C) not less than one year or more than two years,
24 if the person is punished under Section 49.09(a) or (b), Penal Code,
25 and is subject to Section 49.09(h) of that code.

26 (c) The court shall credit toward the period of suspension a
27 suspension imposed on the person for refusal to give a specimen

1 under Chapter 724 if the refusal followed an arrest for the same
2 offense for which the court is suspending the person's license
3 under this chapter. The court may not extend the credit to a
4 person:

5 (1) who has been previously convicted of an offense
6 under Section 49.04, 49.045, 49.07, or 49.08, Penal Code; or

7 (2) whose period of suspension is governed by Section
8 521.342(b).

9 (i) On the date that a suspension order under Section
10 521.343(c) is to expire, the period of suspension or the
11 corresponding period in which the department is prohibited from
12 issuing a license is automatically increased to two years unless
13 the department receives notice of successful completion of the
14 educational program as required by Section 13, Article 42.12, Code
15 of Criminal Procedure. At the time a person is convicted of an
16 offense under Section 49.04 or 49.045, Penal Code, the court shall
17 warn the person of the effect of this subsection. On the person's
18 successful completion of the program, the person's instructor shall
19 give notice to the department and to the community supervision and
20 corrections department in the manner required by Section 13,
21 Article 42.12, Code of Criminal Procedure. If the department
22 receives proof of completion after a period has been extended under
23 this subsection, the department shall immediately end the
24 suspension or prohibition.

25 SECTION 10. Subdivision (3), Section 524.001,
26 Transportation Code, is amended to read as follows:

27 (3) "Alcohol-related or drug-related enforcement

1 contact" means a driver's license suspension, disqualification, or
2 prohibition order under the laws of this state or another state
3 resulting from:

4 (A) a conviction of an offense prohibiting the
5 operation of a motor vehicle or watercraft while:

- 6 (i) intoxicated;
- 7 (ii) under the influence of alcohol; or
- 8 (iii) under the influence of a controlled
9 substance;

10 (B) a refusal to submit to the taking of a breath
11 or blood specimen following an arrest for an offense prohibiting
12 the operation of a motor vehicle or an offense prohibiting the
13 operation of a watercraft, if the watercraft was powered with an
14 engine having a manufacturer's rating of 50 horsepower or more,
15 while:

- 16 (i) intoxicated;
- 17 (ii) under the influence of alcohol; or
- 18 (iii) under the influence of a controlled
19 substance; or

20 (C) an analysis of a breath or blood specimen
21 showing an alcohol concentration of a level specified by Section
22 49.01, Penal Code, following an arrest for an offense prohibiting
23 the operation of a motor vehicle or watercraft while intoxicated.

24 SECTION 11. Subsection (a), Section 524.011,
25 Transportation Code, is amended to read as follows:

26 (a) An officer arresting a person shall comply with
27 Subsection (b) if:

1 (1) the person is arrested for an offense under
2 Section 49.04, 49.045, or 49.06, Penal Code, or an offense under
3 Section 49.07 or 49.08 of that code involving the operation of a
4 motor vehicle or watercraft, submits to the taking of a specimen of
5 breath or blood and an analysis of the specimen shows the person had
6 an alcohol concentration of a level specified by Section
7 49.01(2)(B), Penal Code; or

8 (2) the person is a minor arrested for an offense under
9 Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045,
10 or 49.06, Penal Code, or an offense under Section 49.07 or 49.08,
11 Penal Code, involving the operation of a motor vehicle or
12 watercraft and:

13 (A) the minor is not requested to submit to the
14 taking of a specimen; or

15 (B) the minor submits to the taking of a specimen
16 and an analysis of the specimen shows that the minor had an alcohol
17 concentration of greater than .00 but less than the level specified
18 by Section 49.01(2)(B), Penal Code.

19 SECTION 12. Subsection (b), Section 524.012,
20 Transportation Code, is amended to read as follows:

21 (b) The department shall suspend the person's driver's
22 license if the department determines that:

23 (1) the person had an alcohol concentration of a level
24 specified by Section 49.01(2)(B), Penal Code, while operating a
25 motor vehicle in a public place or while operating a watercraft; or

26 (2) the person was [~~is~~] a minor on the date that the
27 breath or blood specimen was obtained and had any detectable amount

1 of alcohol in the minor's system while operating a motor vehicle in
2 a public place or while operating a watercraft.

3 SECTION 13. Subsection (b), Section 524.015,
4 Transportation Code, is amended to read as follows:

5 (b) A suspension may not be imposed under this chapter on a
6 person who is acquitted of a criminal charge under Section 49.04,
7 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041,
8 Alcoholic Beverage Code, arising from the occurrence that was the
9 basis for the suspension. If a suspension was imposed before the
10 acquittal, the department shall rescind the suspension and shall
11 remove any reference to the suspension from the person's
12 computerized driving record.

13 SECTION 14. Subsection (b), Section 524.022,
14 Transportation Code, is amended to read as follows:

15 (b) A period of suspension under this chapter for a minor
16 is:

17 (1) 60 days if the minor has not been previously
18 convicted of an offense under Section 106.041, Alcoholic Beverage
19 Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense
20 under Section 49.07 or 49.08, Penal Code, involving the operation
21 of a motor vehicle or a watercraft;

22 (2) 120 days if the minor has been previously
23 convicted once of an offense listed by Subdivision (1); or

24 (3) 180 days if the minor has been previously
25 convicted twice or more of an offense listed by Subdivision (1).

26 SECTION 15. Section 524.023, Transportation Code, is
27 amended to read as follows:

1 Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

2 (a) If a person is convicted of an offense under Section 106.041,
3 Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.07, or
4 49.08, Penal Code, and if any conduct on which that conviction is
5 based is a ground for a driver's license suspension under this
6 chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O,
7 Chapter 521, or Subchapter H, Chapter 522, each of the suspensions
8 shall be imposed.

9 (b) The court imposing a driver's license suspension under
10 Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as
11 required by Subsection (a) shall credit a period of suspension
12 imposed under this chapter toward the period of suspension required
13 under Section 106.041, Alcoholic Beverage Code, or Subchapter O,
14 Chapter 521, or Subchapter H, Chapter 522, unless the person was
15 convicted of an offense under Article 67011-1, Revised Statutes, as
16 that law existed before September 1, 1994, Section 19.05(a)(2),
17 Penal Code, as that law existed before September 1, 1994, Section
18 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section
19 106.041, Alcoholic Beverage Code, before the date of the conviction
20 on which the suspension is based, in which event credit may not be
21 given.

22 SECTION 16. Subsections (a) and (d), Section 524.035,
23 Transportation Code, are amended to read as follows:

24 (a) The issues that must be proved at a hearing by a
25 preponderance of the evidence are:

26 (1) whether:

27 (A) the person had an alcohol concentration of a

1 level specified by Section 49.01(2)(B), Penal Code, while operating
2 a motor vehicle in a public place or while operating a watercraft;
3 or

4 (B) the person was [~~is~~] a minor on the date that
5 the breath or blood specimen was obtained and had any detectable
6 amount of alcohol in the minor's system while operating a motor
7 vehicle in a public place or while operating a watercraft; and

8 (2) whether reasonable suspicion to stop or probable
9 cause to arrest the person existed.

10 (d) An administrative law judge may not find in the
11 affirmative on the issue in Subsection (a)(1) if:

12 (1) the person is an adult and the analysis of the
13 person's breath or blood determined that the person had an alcohol
14 concentration of a level below that specified by Section 49.01,
15 Penal Code, at the time the specimen was taken; or

16 (2) the person was [~~is~~] a minor on the date that the
17 breath or blood specimen was obtained and the administrative law
18 judge does not find that the minor had any detectable amount of
19 alcohol in the minor's system when the minor was arrested.

20 SECTION 17. Subsection (a), Section 524.042,
21 Transportation Code, is amended to read as follows:

22 (a) A suspension of a driver's license under this chapter is
23 stayed on the filing of an appeal petition only if:

24 (1) the person's driver's license has not been
25 suspended as a result of an alcohol-related or drug-related
26 enforcement contact during the five years preceding the date of the
27 person's arrest; and

1 (2) the person has not been convicted during the 10
2 years preceding the date of the person's arrest of an offense under:

3 (A) Article 67011-1, Revised Statutes, as that
4 law existed before September 1, 1994;

5 (B) Section 19.05(a)(2), Penal Code, as that law
6 existed before September 1, 1994;

7 (C) Section 49.04, 49.045, or 49.06, Penal Code;

8 (D) Section 49.07 or 49.08, Penal Code, if the
9 offense involved the operation of a motor vehicle or a watercraft;

10 or

11 (E) Section 106.041, Alcoholic Beverage Code.

12 SECTION 18. Subsections (b) and (d), Section 724.012,
13 Transportation Code, are amended to read as follows:

14 (b) A peace officer shall require the taking of a specimen
15 of the person's breath or blood under any of the following
16 circumstances if [+

17 [~~(1)~~] the officer arrests the person for an offense
18 under Chapter 49, Penal Code, involving the operation of a motor
19 vehicle or a watercraft and the person refuses the officer's
20 request to submit to the taking of a specimen voluntarily: [+]

21 (1) [~~(2)~~] the person was the operator of a motor
22 vehicle or a watercraft involved in an accident that the officer
23 reasonably believes occurred as a result of the offense and, [+]

24 [~~(3)~~] at the time of the arrest, the officer
25 reasonably believes that as a direct result of the accident:

26 (A) any individual has died or will die; [~~or~~]

27 (B) an individual other than the person has

1 suffered serious bodily injury; or

2 (C) an individual other than the person has
3 suffered bodily injury and been transported to a hospital or other
4 medical facility for medical treatment;

5 (2) the offense for which the officer arrests the
6 person is an offense under Section 49.045, Penal Code; or

7 (3) at the time of the arrest, the officer possesses or
8 receives reliable information from a credible source that the
9 person:

10 (A) has been previously convicted of or placed on
11 community supervision for an offense under Section 49.045, 49.07,
12 or 49.08, Penal Code, or an offense under the laws of another state
13 containing elements substantially similar to the elements of an
14 offense under those sections; or

15 (B) on two or more occasions, has been previously
16 convicted of or placed on community supervision for an offense
17 under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or an
18 offense under the laws of another state containing elements
19 substantially similar to the elements of an offense under those
20 sections [~~and~~

21 [~~(4) the person refuses the officer's request to~~
22 ~~submit to the taking of a specimen voluntarily].~~

23 (d) In this section, "bodily injury" and "serious bodily
24 injury" have [~~has~~] the meanings [~~meaning~~] assigned by Section 1.07,
25 Penal Code.

26 SECTION 19. Section 724.017, Transportation Code, is
27 amended by amending Subsection (b) and adding Subsection (d) to

1 read as follows:

2 (b) If the blood specimen was taken according to recognized
3 medical procedures, the [~~The~~] person who takes the blood specimen
4 under this chapter, the facility that employs the person who takes
5 the blood specimen, or the hospital where the blood specimen is
6 taken[~~7~~] is immune from civil liability [~~not liable~~] for damages
7 arising from the taking of the blood specimen at the request or
8 order of the peace officer or pursuant to a search warrant [~~to take~~
9 ~~the blood specimen~~] as provided by this chapter and is not subject
10 to discipline by any licensing or accrediting agency or body [~~if the~~
11 ~~blood specimen was taken according to recognized medical~~
12 ~~procedures~~]. This subsection does not relieve a person from
13 liability for negligence in the taking of a blood specimen. The
14 taking of a specimen from a person who objects to the taking of the
15 specimen or who is resisting the taking of the specimen does not in
16 itself constitute negligence and may not be considered evidence of
17 negligence.

18 (d) A person whose blood specimen is taken under this
19 chapter in a hospital is not considered to be present in the
20 hospital for medical screening or treatment unless the appropriate
21 hospital personnel determine that medical screening or treatment is
22 required for proper medical care of the person.

23 SECTION 20. (a) The change in law to Article 18.01, Code of
24 Criminal Procedure, applies only to a search warrant issued on or
25 after the effective date of this Act. A search warrant issued
26 before the effective date of this Act is governed by the law in
27 effect on the date the warrant was issued, and the former law is

1 continued in effect for that purpose.

2 (b) The changes in law to Chapters 521 and 524 and Section
3 724.012, Transportation Code, and Section 13, Article 42.12, Code
4 of Criminal Procedure, apply only to an offense committed on or
5 after the effective date of this Act. An offense committed before
6 the effective date of this Act is covered by the law in effect when
7 the offense was committed, and the former law is continued in effect
8 for that purpose. For purposes of this section, an offense was
9 committed before the effective date of this Act if any element of
10 the offense was committed before that date.

11 SECTION 21. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 328 passed the Senate on March 19, 2009, by the following vote: Yeas 31, Nays 0; May 28, 2009, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 29, 2009, House granted request of the Senate; May 31, 2009, Senate adopted Conference Committee Report by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 328 passed the House, with amendments, on May 19, 2009, by the following vote: Yeas 140, Nays 1, three present not voting; May 29, 2009, House granted request of the Senate for appointment of Conference Committee; May 31, 2009, House adopted Conference Committee Report by the following vote: Yeas 145, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor